



**THE ATTORNEY GENERAL  
OF TEXAS**

July 13, 1989

**JIM MATTOX**  
**ATTORNEY GENERAL**

Robert Bernstein, M.D., F.A.C.P.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78769

Opinion No. JM-1073

Re: Reconsideration of  
JM-983 (1988), regarding  
the use of Station Message  
Detail Recordings (RQ-1641)

Dear Dr. Bernstein:

You have asked that we reconsider Attorney General Opinion JM-983 (1988), in which we concluded that a Station Message Detail Recording device (SMDR) was a pen register. We have received a number of letters and briefs arguing that an SMDR is not in fact a pen register.

In reviewing those letters and briefs we conclude that we based our determination that an SMDR is a pen register on a rather scant description of the device at issue in that opinion. The letters and briefs we received contain persuasive arguments that an SMDR is not in fact a pen register. We decline, however, to make a determination about whether an SMDR as described in those briefs and letters is or is not a pen register since we cannot make a determination that requires the resolution of fact issues.

We emphasize again, however, that even if a device is a pen register, its use is permissible if the use "is a necessary incident to the rendition of service or to the protection of property or of services provided by the enterprise" and is not used for law enforcement or private investigative purposes. Penal Code art. 16.03(d). The use at issue in Attorney General Opinion JM-983 was to help the county "to identify unauthorized long distance telephone usage and avoid waste of County funds." We think such a use is clearly a permissible one under article 16.03(d) of the Penal Code.

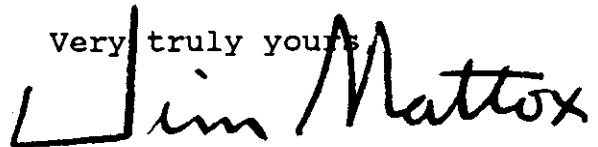
In conclusion, we withdraw Attorney General Opinion JM-983 and decline to make determinations about whether particular devices are or are not pen registers. Regardless of whether a device is a pen register, however, the use of

the device to protect state property by recording the origin of incoming communications as well as outgoing numbers called in order to prevent the public from paying for private calls is permissible under article 16.03(d) of the Penal Code.

S U M M A R Y

Regardless of whether a device is a pen register, the use of such a device to protect state property by recording the origin of incoming communications as well as outgoing numbers called in order to prevent the public from paying for private calls is permissible under article 16.03(d) of the Penal Code. Attorney General Opinion JM-983 is withdrawn.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style. The first name "Jim" is written in a smaller, more compact script, while "Mattox" is written in a larger, more flowing script. The signature is positioned to the right of the typed name and title.

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